IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.213 OF 2006
IN
CIVIL APPLICATION NO.1258 OF 2006
IN
WRIT PETITION NO.6026 OF 2004

Briocia Pharma (India) Pvt. Ltd. ...Appellant
V/s.
All India Knoll Pharmaceuticals .
Employees Union & Ors. ...Respondents

Mr.D.J. Bhange for the Appellant. .
Mr.Arshad Shaikh with Mr.Mahesh Londhe for the Respondents.

CORAM : J.N. PATEL &
A.A. SAYED, JJ.

DATE : 19TH APRIL, 2007.

P.C. :

1. Heard.

2. This Appeal has been preferred against the interim order dated 23.08.2006 passed by the learned Single Judge whereby the interim application has been allowed in terms of prayer clauses (b) and (c). The learned Single Judge further observed that it is made clear that Respondent No.6 is bound by the undertaking. The whole issue arises out of the transfer of the Jejuri Unit, Pune by Respondent Nos.7 and 8 to the original-Respondent No.6, who are the Appellants before us. The settlement has been signed between the 1st Respondent Union and Respondent Nos.7 and 8.

4. The Respondent Union moved the Industrial Court for seeking directions to release the payment of bonus as well as other arrears to be payable in terms of the monetary benefits and as per the settlement dated 23.01.2001 signed between the Union and original Respondent Nos.7 & 8 by filing a complaint (ULP No.341/2002) challenging the proposed transfer of undertaking as it was supposed to deprive the workmen of their rightful claim. The complaint came to be dismissed by the Industrial Court by judgement and order dated 28.04.2004 under which it was upheld that the transfer of undertaking was valid in law and that the consent given by the employees for employment with the Appellant under protest cannot be considered and that the Respondents, who were not willing to accept the employment with the Appellant, are at liberty to exercise the option of compensation under Section 25FF of the Industrial Disputes Act within three months from the date of the said order. The impugned order came to be modified by the learned Single Judge and the petition came up for hearing by observing "the mere fact that the employees have commenced working in the factory situated at Jejuri will not mean that they have consented to be the employees of Respondent No.6 herein."

5. We have heard the learned counsel for the

parties we find that the impugned order is by way of an interim arrangement and the benefits, which accrue under the interim order to the employees, would in no way, cause any prejudice to the Appellant employer for the reason that even otherwise the employees would be entitled for the same under the provisions of Section 25FF whether they succeed or fail in proving their case.

6. We, therefore, find that it will not be proper for us to interfere in the interim arrangement as it is without prejudice to the rights of the parties and protects the interest of both the employer and the employees. The larger issue in the matter is still pending before the learned Single Judge and it would be proper that the learned counsel for the parties move the learned Single Judge in the matter to take up the Writ Petition for expeditious hearing and final disposal.

7. It was strenuously argued before us by the learned counsel appearing for the Appellant that the workmen through their Union are trying to take advantage of the perks and privileges to which they are not entitled. It cannot be denied that the Appellant is their employer and, therefore, it is a plea which is self-contradictory and in case their petition is allowed they can be well compensated by way of

retrenchment compensation as provided under Section 25F which is the first part of Section 25FF of the Industrial Disputes Act. If they want to enjoy all the benefits which are given under the proviso to Section 25FF, it is a precondition that they should accept the Appellant as their employer.

8. We leave the issue at the place where it is to be adjudicated as, in our view, it does not in any manner affect the rights and claims of the parties.

9. Insofar as the grievance of the Appellant that the Respondent Union is trying to raise claim under the garb of the interim order, needless to say that if the Respondent Union wants to initiate any charter of demand under Section 9(A) of the Industrial Disputes Act, it will have to be done in accordance with the procedure provided under the Industrial Disputes Act and that sufficiently safeguards the interest of the parties as it cannot be unilateral and in case the Appellant wants to effect any change they can resort to the procedure by issuing notice of change to the Respondent Union.

10. The Letters Patent Appeal stands disposed of accordingly.

[J.N. PATEL, J.]

[A.A. SAYED, J.]